

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint
2 "is frivolous, malicious, or fails to state a claim upon which relief may be
3 granted," or "seeks monetary relief from a defendant who is immune from such
4 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.
5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
7 elements: (1) that a right secured by the Constitution or laws of the United States
8 was violated, and (2) that the alleged violation was committed by a person acting
9 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

10 B. Legal Claims

11 It is well-established that allegations that prison officials used force
12 maliciously and sadistically to cause harm, rather than in a good-faith effort to
13 maintain or restore discipline, state a cognizable claim under § 1983 for violation
14 of the Eighth Amendment right to be free of cruel and unusual punishment. See
15 Hudson v. McMillian, 503 U.S. 1, 6 (1992). And it is equally well-established
16 that allegations that prison officials were deliberate indifferent to a prisoner's
17 health and safety concerns also state a cognizable Eighth Amendment claim
18 under § 1983. See Farmer v. Brennan, 511 U.S. 825, 832, 837 (1994) (prison
19 official deliberately indifferent only if he knew of and disregarded an excessive
20 risk to inmate health or safety).

21 Plaintiff's conclusory allegations will be dismissed with leave to amend to
22 set forth specific facts showing how defendants used force maliciously and
23 sadistically to cause him harm, and/or were deliberately indifferent to plaintiff's
24 health or safety concerns, if possible. Plaintiff must also link each named
25 defendant with his allegations of wrongdoing so as to show how each defendant
26 actually and proximately caused the deprivation of his federal rights of which he
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1 complains. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

2 **CONCLUSION**

3 For the foregoing reasons, the SAC is DISMISSED with leave to amend,
4 as indicated above, within 30 days of this order. The pleading must be simple
5 and concise and must include the caption and civil case number used in this order
6 and the words THIRD AMENDED COMPLAINT (TAC) on the first page.
7 Failure to file a proper TAC within the designated time will result in the
8 dismissal of this action.

9 Plaintiff's recent motion for injunctive relief (docket # 12) is DENIED.
10 But plaintiff is free to set forth specific facts in his TAC showing how defendants
11 failed to provide him a healthy diet conforming to his sincere religious beliefs
12 and/or improperly confiscated his books. Plaintiff must also link each named
13 defendant with his allegations of wrongdoing.

14 Plaintiff is advised that the TAC will supersede the original complaint and
15 all other pleadings. Claims and defendants not included in the TAC will not be
16 considered by the court. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).
17 SO ORDERED.

18 DATED: June 13, 2013

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21 CHARLES R. BREYER
22 United States District Judge
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